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PATENT APPLICATION
ATTORNEY DOCKET NO. TRMB-T8917

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Casey B. FAN, et al

Confirmation No.: 3917

Application No.: 09/696,446

Examiner: Nalvan, A.

Filing Date: 10/24/2000

Group Art Unit: 2434

Title: LOCATION AUTHENTICATION STAMP ATTACHED TO MESSAGE

Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
INDICATED IN NOTICE OF ALLOWANCE
(37 C.F.R. 1.705)

NOTE: 37 C.F.R. 1.704 (e): "Submission of an application for patent term adjustment under 1.705(b) (with or without request under Sec. 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section."

1. This request for reconsideration of the patent term adjustment indicated in the Notice of Allowance mailed on 02/09/2009
 The issue fee is being paid as set forth in the papers attached hereto.
2. Applicant submits herewith a "Statement of the Correct Patent Term Adjustment: Basis(es) Under 1.702 For the Adjustment-Part B." (37 C.F.R. 1.705(b)(2)(i) and (ii)).
3. Any patent granted on this application (37 C.F.R. 1.705(b)(2)(iii)):
 is not subject to a terminal disclaimer.
 is subject to a terminal disclaimer, and the expiration date specified in the terminal disclaimer is _____
4. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 1.704 (37 C.F.R. 1.705(b)(2)(iv)):
 there were none (37 C.F.R. 1.705(b)(2)(iv)(B)). there were as follows (37 C.F.R. 1.705(b)(2)(iv)(A)):

- 12/28/2004, Applicant delay of 89 days in filing response
- 10/24/2005, RCE filed with Applicant delay of 87 days
- 3/03/2006, Applicant delay of 3 days in filing response
- 10/20/2006, Applicant delay of 91 days filing Notice of Appeal
- 11/05/2007, RCE filed
- 3/28/2008, Applicant delay of 2 days in filing response
- 9/09/2008, RCE filed

5. Also attached hereto is a "Request for Reinstatement For All and/or Part of the Period Adjustment Reduced Pursuant to 1.704(b)-Part C." (37 C.F.R. 1.705(c)).
6. The fee set forth in 1.18(e) (\$200.00), required by 37 C.F.R. 1.705(b)(1), is paid as follows:

Please charge Deposit Account 50-4157 \$ 200.00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 50-4157 pursuant to 37 CFR 1.25.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents, Alexandria, VA 22313-1450

Date of Deposit:

OR

I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number (571)273-8300 or via electronic submission.

Date of facsimile/transmission: 05/08/2009

Typed Name: Brenda Dinapoli

Signature: /Brenda Dinapoli/

Respectfully submitted,

Casey B. FAN, et al

By /John P. Wagner, Jr./

JOHN P. WAGNER, JR.

Attorney/Agent for Applicant(s)

Reg No. : 35,398

Date : 05/08/2009

Telephone : 408-377-0500

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STATEMENT OF THE CORRECT PATENT TERM ADJUSTMENT:
BASIS(ES) UNDER 1.702 FOR THE ADJUSTMENT
(37 C.F.R. 1.705(b)(2)(i) and (ii))

1. This statement is being submitted in support of the "Request for Reconsideration of Patent Term Adjustment Indicated in Notice of Allowance" to which this statement is attached.

37 C.F.R. 1.705(b)(2)(i)

2. The patent term adjustment shown on the Notice of Allowance is: 648 days

It is respectfully suggested that the correct patent term adjustment under 1.702 is: 952 days

37 C.F.R. 1.705(b)(2)(ii)

NOTE: Under 1.705(b)(2)(ii) applicant must set forth: "The relevant dates as specified in 1.703(a) through(e) for which an adjustment is sought and the adjustment as specified in 1.703(f) to which the patent is entitled."

3. The basis(es) on which the applicant seeks adjustment are as follows:

The adjustment is sought for the following date: between 6/30/2004 and 10/24/2005

Adjustment to be made for this date: 304days = (480d - app. delay of 176d)

An initial Office Action was received 918 days after the 14-month date after filing. The 3-year rule to allowance was violated by 480 days that did not overlap with the 14-month violation of 918 days (subtraction of applicant delays of 87 and 89 days reduces the 3-year delay to 304 days). Per Wyeth v. Dudas (580 F. Supp. 2d 138; 88 U.S.P.Q.2D (BNA) 1538, September 30, 2008), USPTO's view that any administrative delay under 35 U.S.C.S. § 154(b)(1)(A) overlapped any three-year maximum pendency delay under § 154(b)(1)(B) could not be squared with language of § 154(b)(1)(B), as "B delay" began when PTO had failed to issue patent within three years, not before.

Plus additional page(s)

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Typed Name: Brenda Dinapoli

Signature: /Brenda Dinapoli/